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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

RETAIL WHOLESALE  
DEPARTMENT STORE UNION  
LOCAL 338 RETIREMENT FUND, on  
behalf of itself and all others similarly  
situated,

Plaintiff,

v.

BEYOND MEAT, INC., ETHAN  
WALDEN BROWN, MARK J.  
NELSON, and PHILLIP E. HARDIN,

Defendants.

Case No. 2:23-cv-03602 MWF (AGRx)

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
THE MOTION OF RETAIL  
WHOLESALE DEPARTMENT  
STORE UNION LOCAL 338  
RETIREMENT FUND FOR  
APPOINTMENT AS LEAD  
PLAINTIFF AND APPROVAL OF  
ITS SELECTION OF LEAD  
COUNSEL**

Date: August 7, 2023

Time: 10:00 a.m.

Courtroom: 5A

Judge: Hon. Michael W. Fitzgerald

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Retail Wholesale Department Store Union Local 338 Retirement Fund (“Local 338”) respectfully submits this memorandum of points and authorities in support of its motion, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), for entry of an order: (1) appointing Local 338 as Lead Plaintiff; (2) approving Local 338’s selection of Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) to serve as Lead Counsel for the Class; and (3) granting any such further relief as the Court may deem just and proper.

## **I. PRELIMINARY STATEMENT**

On May 11, 2023, Local 338, through its counsel Bernstein Litowitz, filed the above-captioned securities class action on behalf of purchasers of Beyond Meat, Inc. (“Beyond Meat” or the “Company”) common stock between May 5, 2020 and October 13, 2022, inclusive (the “Class Period”). This action alleges violations of Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a), and U.S. Securities and Exchange Commission Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, against Beyond Meat and certain of the Company’s current and former senior executives (collectively, “Defendants”). Specifically, the action alleges that, throughout the Class Period, Defendants made numerous materially false and misleading statements concerning the Company’s ability to produce plant-based meats at commercial scale, repeatedly touted the success of the Company’s product tests with numerous high-profile partnerships, and blamed delays in launching those partnerships on Covid-19. Beyond Meat investors, including Local 338, incurred significant losses when a series of disclosures revealed that the Company was experiencing rising expenses and inventories, including a \$1.8 million inventory write-off, ongoing scaling problems and deteriorating relationships with its potential partners, and the abrupt departure of several of its top executives.

1 The PSLRA provides that the “most adequate plaintiff” is to serve as Lead  
 2 Plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(i). Under the PSLRA, the most adequate  
 3 plaintiff is the movant with the “largest financial interest” in the relief sought by the  
 4 Class in this litigation and that also makes a *prima facie* showing that it is a typical  
 5 and adequate Class representative under Rule 23 of the Federal Rules of Civil  
 6 Procedure (“Rule 23”). 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). For the reasons set forth  
 7 below, Local 338 is the “most adequate plaintiff” by virtue of, among other things,  
 8 the approximately \$2.7 million in losses it incurred on its purchases of more than  
 9 43,000 shares of Beyond Meat common stock during the Class Period.<sup>1</sup>

10 In addition to asserting the largest financial interest, Local 338 readily  
 11 satisfies the relevant requirements of Rule 23 because its claims are typical of those  
 12 of all members of the Class and it will fairly and adequately represent the interests  
 13 of the Class. Local 338 is a paradigmatic Lead Plaintiff under the PSLRA because  
 14 it is a sophisticated institutional investor with a significant financial interest in the  
 15 litigation, and has prior experience serving as a lead plaintiff in securities class action  
 16 litigation and supervising the work of outside counsel. Further, Local 338 fully  
 17 understands the Lead Plaintiff’s obligations to the Class under the PSLRA and it is  
 18 willing and able to undertake those responsibilities to ensure the vigorous  
 19 prosecution of this action. Indeed, Local 338 has already demonstrated its  
 20 commitment and ability to effectively prosecute this action, including through its  
 21 filing of the only complaint asserting these claims against Defendants. Accordingly,  
 22 Local 338 has both the incentive and proven ability to supervise and monitor  
 23 counsel.

24  
 25  
 26 <sup>1</sup> Local 338’s PSLRA-required Certification is provided as Exhibit A to the  
 27 Declaration of Jonathan D. Uslaner (the “Uslaner Decl.”), filed concurrently  
 28 herewith. In addition, a chart providing calculations of Local 338’s losses is  
 provided as Exhibit B to the Uslaner Decl. Unless otherwise noted, all internal  
 citations and quotations are omitted and all emphasis is added.

Local 338 has also demonstrated its adequacy through its selection of Bernstein Litowitz to serve as Lead Counsel for the Class. Bernstein Litowitz is eminently qualified to prosecute this case and has extensive experience in securities fraud litigation, which will benefit the Class.

Based on Local 338's financial interest in the outcome of this action, and its ability to oversee counsel, Local 338 respectfully requests that the Court appoint it as Lead Plaintiff and otherwise grant its motion.

## **II. SUMMARY OF THE ACTION**

Beyond Meat is a global producer of plant-based meat substitutes such as Beyond Burgers, Beyond Sausages, Beyond Meatballs, and Beyond Pepperoni. Founded in 2009, Beyond Meat found success creating small, sample-sized prototypes of its product offerings and, subsequently, became the best-performing IPO in nearly two decades when it went public in 2019. After going public, Beyond Meat launched a series of high-profile partnerships with foodservice providers such as Starbucks, McDonalds, KFC, Pizza Hut, and Taco Bell.

The action alleges that, throughout the Class Period, Defendants made numerous materially false and misleading statements and omissions concerning the Company's ability to produce plant-based meats at scale. Specifically, Defendants repeatedly assured investors that Beyond Meat conducted "extensive testing" to "ensure manufacturability" of its plant-based meat products at commercial scale, and touted the success of the Company's product tests with its large-scale partnerships as "very positive." Further, Defendants blamed any delays in launching these large-scale partnerships on Covid-19.

In reality, although Beyond Meat had some early success creating its products in a lab in small quantities, it struggled to manufacture those products at scale to the specifications of its partners. According to current and former employees of the Company, Beyond Meat suffered from widespread scaling issues, misaligned and delayed decision-making, and severe production delays. These problems led some

1 partners to balk at the high price of Beyond Meat's products and express doubts  
2 about the Company's ability to produce them at commercial scale.

3 The truth began to emerge on October 22, 2021, when Beyond Meat  
4 announced that the Company was reducing its third quarter net revenues outlook by  
5 up to \$34 million, or 25%. As part of the announcement, Beyond Meat also revealed  
6 that the Company's expenses and inventories were continuing to rise. As a result of  
7 these disclosures, the price of Beyond Meat stock declined by \$12.82 per share, or  
8 nearly 12%. Then, on November 10, 2021, after the markets closed, Beyond Meat  
9 announced a \$1.8 million inventory write-off. As a result of this disclosure, the price  
10 of Beyond Meat stock declined by \$12.55 per share, or nearly 13%. However,  
11 Defendants continued to assure investors of the success of Beyond Meat's  
12 partnerships, and blamed the Company's poor financial results on the Covid-19  
13 pandemic.

14 One week later, on November 17, 2021, *Bloomberg* published an article  
15 highlighting the delays in product roll out and execution challenges Beyond Meat  
16 was facing. That article, citing five former Beyond Meat employees, laid bare the  
17 Company's ongoing scaling problems and how those problems were tarnishing the  
18 Company's relationships with potential partners. In response to this news, the price  
19 of Beyond Meat stock declined by \$3.01 per share, or over 3.5%. Then, on  
20 December 9, 2021, multiple media sources reported that Taco Bell had cancelled a  
21 planned test of Beyond Carne Asada due to ongoing quality concerns. On this news,  
22 the price of Beyond Meat stock declined by \$5.88 per share, or nearly 8%. In the  
23 wake of these disclosures, Defendants continued to assure investors that its product  
24 testing was going well.

25 Finally, on October 14, 2022, Beyond Meat announced the departure of  
26 several of its top executives, including its Chief Operating Officer, Chief Growth  
27 Officer, and Chief Financial Officer. These disclosures caused the price of Beyond  
28 Meat stock to decline by \$1.43 per share, or over 9.6%.



### III. ARGUMENT

#### A. Local 338 Is The Most Adequate Plaintiff

Local 338 respectfully submits that it is entitled to be appointed Lead Plaintiff because it is the movant “most capable of adequately representing the interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA sets forth the procedure for selecting the Lead Plaintiff in class actions arising under the federal securities laws and provides a presumption in favor of the movant that has the “largest financial interest” in the relief sought by the Class and satisfies the relevant requirements of Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *see also In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (“The [PSLRA] provides a simple . . . process for identifying the lead plaintiff pursuant to these criteria.”). As set forth below, Local 338 believes it is the “most adequate plaintiff” and is entitled to be appointed as Lead Plaintiff.

##### 1. Local 338’s Motion Is Timely

Under the PSLRA, any Class member may move for appointment as Lead Plaintiff within 60 days of the publication of notice that the first action asserting substantially the same claims has been filed. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). On May 11, 2023, Local 338 filed the above-captioned securities class action in this District, asserting claims for violations of Sections 10(b) and 20(a) of the Exchange Act against Defendants. That same day, counsel for Local 338, Bernstein Litowitz, published a notice on *Business Wire* alerting investors to the pendency of the action and informing them of the 60-day deadline to seek appointment as Lead Plaintiff, which is July 10, 2023. *See* Uslander Decl., Ex. C. Accordingly, Local 338’s motion is timely.

##### 2. Local 338 Has The Largest Financial Interest In The Relief Sought By The Class

Local 338 is entitled to be appointed Lead Plaintiff because it has the largest financial interest in the relief sought by the Class. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). As demonstrated herein, Local 338 suffered losses of



1 approximately \$2.7 million on its Class Period purchases of Beyond Meat common  
 2 stock. *See* Uslander Decl., Exs. A & B. To the best of Local 338’s knowledge, there  
 3 is no other applicant seeking Lead Plaintiff appointment that has a larger financial  
 4 interest in this litigation. Accordingly, Local 338 has the largest financial interest of  
 5 any qualified movant seeking Lead Plaintiff status and is the presumptive “most  
 6 adequate plaintiff.” 15 U.S.C. § 78u-4(a)(3)(B)(iii).

### 7 **3. Local 338 Otherwise Satisfies The Requirements Of Rule 23**

8 In addition to possessing the largest financial interest in the outcome of the  
 9 litigation, Local 338 otherwise satisfies the requirements of Rule 23. *See* 15 U.S.C.  
 10 § 78u-4(a)(3)(B)(iii)(I)(cc). On a motion to serve as lead plaintiff, a movant need  
 11 only make a “preliminary showing” under Rule 23 that the proposed lead plaintiff’s  
 12 claims are typical and adequate. *Roberti v. OSI Sys., Inc.*, 2014 WL 12845727, at  
 13 \*3 (C.D. Cal. Mar. 17, 2014) (Fitzgerald, J.). As detailed below, Local 338 satisfies  
 14 these requirements.

15 Local 338’s claims are typical of the claims of other purchasers of Beyond  
 16 Meat common stock. “To make a prima facie showing of typicality, a moving  
 17 plaintiff should establish that its claims are similar to all class members. . . . A prima  
 18 facie showing of typicality does not require that the claims of the movant be nearly  
 19 identical to those of the class.” *Id.* Here, Local 338 and all other Class members  
 20 suffered the same injuries, their claims arise from the same course of events, and  
 21 their legal arguments to prove Defendants’ liability are nearly identical. Like all  
 22 other Class members, Local 338 (1) purchased Beyond Meat common stock during  
 23 the Class Period, (2) at prices allegedly artificially inflated by Defendants’ materially  
 24 false and misleading statements and/or omissions, and (3) was harmed when the  
 25 truth was revealed. *See Shreves v. Xunlei Ltd.*, 2015 WL 5446935, at \*3 (C.D. Cal.  
 26 Sept. 15, 2015) (Fitzgerald, J.) (finding typicality requirement met when proposed  
 27 lead plaintiff “purchased [defendant corporation] stock at prices [movant] alleges  
 28

1 were artificially inflated by Defendants’ misrepresentations and omissions, and was  
 2 allegedly damaged thereby”). As such, Local 338 is a typical Class representative.

3 Local 338 similarly satisfies the adequacy requirement of Rule 23. Under  
 4 Rule 23(a)(4) of the Federal Rules of Civil Procedure, the representative party must  
 5 “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4).  
 6 “The adequacy requirement is met if there are no conflicts between the  
 7 representative and class interests and the representative’s attorneys are qualified,  
 8 experienced, and generally able to conduct the litigation.” *Ashraf v. Miniso Grp.*  
 9 *Holding Ltd.*, 2022 WL 19333267, at \*3 (C.D. Cal. Nov. 8, 2022). Local 338  
 10 satisfies these elements because its substantial financial stake in the litigation  
 11 provides the incentive to vigorously represent the Class’s claims. Local 338’s  
 12 interests are aligned with those of the other Class members and are not antagonistic  
 13 in any way. There are no facts to suggest any actual or potential conflict of interest  
 14 or other antagonism between Local 338 and other members of the Class.

15 Further, Local 338 has experience serving as a lead plaintiff in securities class  
 16 actions and supervising the work of outside counsel, including its proposed Lead  
 17 Counsel Bernstein Litowitz. Local 338 is currently serving as lead plaintiff in *Retail*  
 18 *Wholesale Department Store Union Local 338 Retirement Fund v. Stitch Fix, Inc.*,  
 19 No. 22-cv-4893 (N.D. Cal.), with Bernstein Litowitz serving as lead counsel, and in  
 20 *Local 295 IBT Employer Group Welfare Fund v. Compass Minerals International,*  
 21 *Inc.*, No. 22-cv-2432 (D. Kan.). As such, Local 338 fully understands the Lead  
 22 Plaintiff’s obligations under the PSLRA to oversee and supervise the litigation  
 23 separate and apart from counsel, and has submitted a sworn Certification as to its  
 24 willingness and ability to fulfill those duties. *See* Uslander Decl., Ex. A.

25 In addition, Local 338—a sophisticated institutional investor responsible for  
 26 managing approximately \$500 million in assets—is exactly the type of investor that  
 27 Congress sought to empower, through the enactment of the PSLRA, to lead  
 28 securities class actions. *See Lloyd v. CVB Fin. Corp.*, 2011 WL 13128303, at \*5

(C.D. Cal. Jan. 21, 2011) (noting that the PSLRA “establishes a preference that sophisticated institutional investors direct the course of securities cases”); H.R. Conf. Rep. No. 104-369, at \*34 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 733 (1995) (explaining that “increasing the role of institutional investors in class actions will ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions”). As such, Local 338 possesses the experience and resources to vigorously litigate the action and supervise Lead Counsel.

Local 338’s adequacy is also demonstrated by the fact that it has already taken measures to protect the interests of the Class and ensure that the claims are vigorously and effectively prosecuted. Most notably, Local 338, through its counsel, Bernstein Litowitz, filed the only complaint asserting these claims against Defendants, and initiated the process for investors to seek appointment as Lead Plaintiff.

Finally, Local 338 has demonstrated its adequacy through its selection of Bernstein Litowitz to serve as Lead Counsel to represent the Class. As discussed more fully below, Bernstein Litowitz is highly qualified and experienced in securities class action litigation and has repeatedly demonstrated an ability to conduct complex securities class action litigation effectively. Accordingly, Local 338 satisfies the typicality and adequacy requirements of Rule 23.

#### **B. Local 338 Selected Well-Qualified Lead Counsel To Represent The Class**

Pursuant to the PSLRA, a movant shall, subject to Court approval, select and retain counsel to represent the class it seeks to represent, and the court should not disturb that selection unless it is necessary to “protect the interests of the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa); *see also Cohen v. U.S. Dist. Ct. for N. Dist. of Cal.*, 586 F.3d 703, 712 (9th Cir. 2009) (“[I]f the lead plaintiff has made a reasonable choice of counsel, the district court should generally defer to that choice.”).

1 Bernstein Litowitz is among the preeminent securities class action law firms  
 2 in the country. *See* Uslander Decl., Ex. D (Bernstein Litowitz’s Firm Résumé).  
 3 Bernstein Litowitz served as lead counsel in *In re WorldCom, Inc. Securities*  
 4 *Litigation*, No. 02-cv-3288 (S.D.N.Y.), in which settlements totaling more than \$6  
 5 billion—the second-largest recovery in securities class action history—were  
 6 obtained for the class. Bernstein Litowitz also secured a resolution of \$2.43 billion  
 7 for the class in *In re Bank of America Corp. Securities, Derivative & ERISA*  
 8 *Litigation*, No. 09-md-2058 (S.D.N.Y.), a \$1.06 billion recovery for the class in *In*  
 9 *re Merck & Co., Inc. Securities, Derivative & “ERISA” Litigation*, No. 05-cv-1151  
 10 (D.N.J.), and a \$730 million settlement on behalf of the class in *In re Citigroup Inc.*  
 11 *Bond Litigation*, No. 08-cv-9522 (S.D.N.Y.).

12 Significant examples in which courts in this District and Circuit have  
 13 recognized Bernstein Litowitz as adequate and qualified class counsel in securities  
 14 class actions include: *In re Allergan, Inc. Proxy Violation Securities Litigation*, No.  
 15 14-cv-2004 (C.D. Cal.) (recovering \$250 million for investors); *In re New Century*  
 16 *Securities Litigation*, No. 07-cv-931 (C.D. Cal.) (recovering approximately \$125  
 17 million for investors); *In re Mattel, Inc. Securities Litigation*, No. 19-cv-10860 (C.D.  
 18 Cal.) (recovering \$98 million for investors); *In re Merit Medical Systems, Inc.*  
 19 *Securities Litigation*, No. 19-cv-2326 (C.D. Cal.) (recovering \$18.25 million for  
 20 investors); *Roberti v. OSI Systems Inc.*, No. 13-cv-9174 (C.D. Cal.) (Fitzgerald, J.)  
 21 (recovering \$15 million for investors); *In re McKesson HBOC, Inc. Securities*  
 22 *Litigation*, No. 99-cv-20743 (N.D. Cal.) (recovering \$1.05 billion for investors, the  
 23 largest recovery ever in a securities class action in this Circuit); *Hefler v. Wells*  
 24 *Fargo & Company*, No. 16-cv-5479 (N.D. Cal.) (recovering \$480 million for  
 25 investors); *In re Clarent Corp. Securities Litigation*, No. 01-cv-3361 (N.D. Cal.)  
 26 (conducting a four-week trial and obtaining a favorable jury verdict finding the CEO  
 27 and former auditor of the defendant company liable, leading to a recovery of millions  
 28 of dollars for investors); and *Retail Wholesale Department Store Union Local 338*

*Retirement Fund v. Stitch Fix, Inc.*, No. 22-cv-4893 (N.D. Cal.) (Bernstein Litowitz currently serving as lead counsel, with Local 338 serving as lead plaintiff).

Thus, the Court may be assured that by granting this motion, the Class will receive the highest caliber of legal representation.<sup>2</sup>

#### IV. CONCLUSION

For the reasons discussed above, Local 338 respectfully requests that the Court appoint it as Lead Plaintiff, approve its selection of Bernstein Litowitz as Lead Counsel for the Class, and grant any such further relief as the Court may deem just and proper.

Dated: July 10, 2023

Respectfully submitted,

**BERNSTEIN LITOWITZ BERGER  
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<sup>2</sup> Local 338 brings to the Court's attention an order issued by a court in the United States District Court for the Northern District of California in an unrelated action in which Bernstein Litowitz served as lead counsel for the lead plaintiff in that case, SEB Investment Management AB, and as class counsel for the certified class. *See SEB Inv. Mgmt. AB v. Symantec Corp.*, 2021 WL 1540996, at \*1 (N.D. Cal. Apr. 20, 2021) (Uslaner Decl., Ex. E). Counsel for an unsuccessful lead plaintiff movant raised questions about Bernstein Litowitz's hiring of a former employee of the lead plaintiff. Following discovery and extensive briefing, the court allowed Bernstein Litowitz to continue as class counsel. *See id.* at \*1-2. The court nevertheless ordered Bernstein Litowitz to bring the order to the attention of the court when seeking appointment as class counsel, and also to the decision maker for the proposed lead plaintiff who selects class counsel. *See id.* at \*2. Local 338 is aware of the order, and affirms its selection of Bernstein Litowitz as proposed Lead Counsel. Importantly, the *Symantec* court granted final approval of a \$70 million settlement achieved by SEB Investment Management AB and Bernstein Litowitz. In addition, courts throughout the country have repeatedly appointed Bernstein Litowitz as lead or class counsel in securities class actions after being apprised of the *Symantec* order. *See Uslaner Decl., Ex. F* (collecting cases).

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Union Local 338 Retirement Fund*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

**BERNSTEIN LITOWITZ BERGER  
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